

(2011) 12 DEL CK 0401

In the Delhi High Court

Case No : Writ Petition (C) No. 1986 of 2010

Sh. S.K. Tandon

APPELLANT

Vs

Export Inspection Council of India and Another

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2011) 12 DEL CK 0401

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : L.R. Khatana, Advocate for R-1, Mr. Michael Dias with Mr. Siddharth Dias, Advocates for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks quashing of the order dated 26.02.2010 to the extent of his place of posting at Kochi Head Office (Kerala). The petitioner further seeks directions to direct respondents to post him at Delhi in terms of the Govt. of India instructions notified through OM No. 14017/41/90-Estt.(RR) dated 15.02.1991.

2. Brief facts of the case relevant for deciding the present petition are that the petitioner joined the respondent organization in 1976 as Junior Scientific Assistant and the petitioner was promoted to the post of Technical Officer in 1979 and thereafter posted at various places. In the year 2010 the respondents initiated the process for a promotion of a Deputy Director and the petitioner having come to know the same, submitted a representation on 23.2.2010 expressing his personal difficulty that he has a mentally challenged daughter and should not be put to any hardship at the place of posting. The respondent thereafter posted the petitioner at Kochi as Deputy Director vide impugned order dated 26.2.2010 and feeling aggrieved with the same, the petitioner has preferred the present petition.

3. In support of his case, the petitioner argued himself and the main plank of the argument of the petitioner was that the respondent has ignored the Govt. of India instructions notified through OM No. 14017/41/90-Estt.(RR) dated 15.02.1991, making special provision for employed parents of a mentally retarded child to be given posting at a place of his/her choice. The contention raised by the petitioner was that he has a daughter aged about 24 years suffering from Down's syndrome; a mental problem and his posting at Kochi would deprive him to provide proper medical treatment to his daughter and also proper education. The petitioner submitted that neither proper medical facilities are available at Kochi nor is there any educational institution for such special children where his daughter could continue her education. The petitioner also submitted that there are enough vacancies for the post of Deputy Director available in Delhi Office, but yet his representation to post him at Delhi was not considered by the respondent. The petitioner also submitted that already a person of the rank of Deputy Director (Technical) has been handling the Certificate of Origin Activity at Kochi for the last one year, and therefore, there is absolutely no reason for the respondents to have posted the petitioner for handling the said Certificate of Origin Activity at Kochi Office. The petitioner further submitted that the respondents have acted in a most malafide manner and in utter violation of Articles 14 and 16 of the Constitution of India by adopting a different approach towards the petitioner amongst similarly placed officers. The petitioner further submitted that if his technical expertise can be utilized by taking his services at Delhi Office, then he should not be deprived to take care of his mentally challenged child who is being given proper education and medical help in Delhi which may not be available at the place of his posting at Kochi.

4. Opposing the present petition, Mr. L.R. Khatana, counsel for respondent No. 1 strongly contended that the present petition is grossly misconceived as the posting of the petitioner to Kochi was on his promotion to the post of Deputy Director and the said posting is in view of the administrative exigencies and in public interest. Counsel also submitted that the petitioner is a specialist in the matter of Preferential Certificate of Origin and there is no officer who has specialization in this field at Kochi and because of petitioner not joining his duty at Kochi, an officer from the Food Scheme has been posted at the said place to manage the said technical duty of Preferential Certificate Origin for the time being. The respondent also took a stand that the petitioner cannot attribute any malafide against the respondent as the posting of the petitioner on promotion has been done in public interest. Counsel further submitted that in fact out of 28 years of service, the petitioner remained posted at Delhi for most of his service career and for rest he was posted in the neighbourhood of NCR of Delhi. The respondent has further submitted that the petitioner was given proper hearing and the decision not to change his place of posting from Kochi was taken after due consideration of his representations. Counsel also submitted that due consideration was given by the respondent to the OM No. 14017/41/90-Estt.(RR)

dated 15.02.1991, which official memorandum is directory in nature and cannot have a transcendental effect over the supervening administrative exigencies and demand of public interest. In support of his arguments, learned counsel for the respondent placed reliance on the following judgments:

1. Mohd. Masood Ahmad Vs. State of U.P. and Others,
2. State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, .
3. S.C. Saxena -vs-Union of India & Ors., (2006) 9 SCC 583.
5. I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the arguments advanced by them.
6. It is a well settled legal position that the transfer is not only an incidence of service but a necessary condition and no employee can claim to be posted at one place forever. It is for the administration to take appropriate decision on the transfer and postings of the staff keeping in view the administrative exigencies and such decisions taken by the administration shall not be interfered with by the courts unless they are vitiated either by malafides or by some extraneous considerations or there is some kind of prohibition under the Service Rules for such transfer or that the authorities who issued the orders are not competent to pass such orders. It would be relevant here to refer to the judgment of the Apex Court in the case of National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan & Ors. (2001) 8 SCC 374 wherein it was held as under:

It is by now well-settled and often reiterated by this Court that no Government servant or employee of public Undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned.

The scope of judicial review is very limited in the matters of transfers and the court while exercising jurisdiction under Article 226 of the Constitution will not go into the question as to whether the transfer was done in public interest or not as that would require the adjudication on facts which would not be in the ambit of writ jurisdiction. It would be relevant here to mention that the Apex Court in the case of State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, held that the court cannot go into the question of relative hardship and the same will not be a ground for judicial review as it is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and

efficient administration.

7. In the background of the aforesaid legal pronouncements, and facts of the case at hand, this Court is of the considered view that the order of transfer dated 26.02.2010 and the relieving order issued on 09.03.2010 issued by the respondent do not smack of any malafide or bias against the petitioner and the same has been issued by the respondent due to administrative exigencies in public interest. It cannot be lost sight of the fact that vide office order dated 26.02.2010, 14 officers were promoted and on promotion they were posted to various offices under the control of the respondent and the petitioner being one of the officers cannot decide himself the place of his suitable posting on the ground that his services to the respondent can prove to be more beneficial if he is posted at Delhi. If such a plea of any employee is accepted then it will result in the collapse of the entire administrative set up of any Govt. Undertaking. It cannot be the prerogative of the officers or employees to choose their own place of postings, as it is the function of the administration to decide the place of posting of its employees, keeping in view the various administrative factors and requirements of staff at a particular place strength wise ,nature of their duties and other technical capabilities of such staff.

8. The petitioner has also relied upon the OM No. 14017/41/90-Estt.(RR) dated 15.02.1991, which for better appreciation is reproduced as under:

No. AB 140174/41/90-Estt.(RR)

Government of India

Ministry of Personnel, Public Grievances & Pensions

(Department of Personnel & Training)

New Delhi, 15 February, 1991

OFFICE MEMORANDUM

Subject : Posting of Government employees who have mentally retarded children.

The undersigned is directed to say that there has been a demand that an employed parent of a mentally retarded child should be given posting at a place of his/her choice. This demand has been made on the plea that facilities of medical aid and education of such children does not require special care and patience and is expensive. Hence some concessions from the Government at least in matters of posting at a place of choice is called for.

2. The matter has been examined. Considering that the facilities for medical help and education of mentally retarded children may not be available at all stations, a choice in the place of posting is likely to be of some help to the parent in taking care of such a child. While administratively it may not be possible in all cases to ensure posting of such an employee at a place of his/her choice, Ministries/ Departments are requested to take a sympathetic view on the merits of each

case and accommodate such requests for posting to the extent possible.

(M.V. Kesavan)

DIRECTOR

The petitioner also cannot take shelter under the said office memorandum as the said office memorandum is advisory in nature and not binding upon the administration and only calls for taking a sympathetic view to the extent possible in such like matters. Admittedly, as the daughter of the petitioner is about 24 years of age and the petitioner has not placed on record anything to satisfy this Court or the respondent explaining as to what kind of education she is receiving which cannot be imparted at Kochi. The petitioner has further not placed on record any material to persuade this Court that she would be deprived of any particular medical help which she is getting in Delhi. It is a matter of fact that Kochi is also one of the advanced cities where all medical and educational facilities are available and it is not a kind of any remote area where the petitioner can claim that he would not be able to provide proper medical help and educational facilities to his daughter.

9. Before parting it would be also pertinent to refer to the judgment of the Apex Court in the case of S.C Saxena vs. Union of India (2006) 9 SCC 583 wherein it was held that it is the duty of the government officer to comply with the transfer order and not doing the same can result into misconduct and the relevant para of the same is reproduced as under:

6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

10. In the light of the above discussion, there is no merit in the present petition and the same is accordingly, dismissed.